

State of Missouri
Office of Secretary of State

Case No. AP-11-16

IN THE MATTER OF:

JAMES A. BAYER, CRD#1011184;

Respondent.

Serve at: James A. Bayer
5089 Lampglow Court
St. Louis, Missouri 63129

**ORDER TO CEASE AND DESIST AND ORDER TO SHOW
CAUSE WHY CIVIL PENALTIES, COSTS, AND
RESTITUTION SHOULD NOT BE IMPOSED**

On January 18, 2011, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through the Securities Division's Chief Enforcement Counsel, Nathan Soendker, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties, Costs, and Restitution Should Not Be Imposed. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

1. James A. Bayer ("Bayer") is a Missouri resident with a Central Registration Depository System ("CRD") number of 1011184 and has a last known address of 5089 Lampglow Court, St. Louis, Missouri 63129. Bayer has never been registered with a broker-dealer or investment adviser firm. Bayer holds an active Missouri insurance producer's license (#178601).
2. Bayer and Associates was registered in Missouri as a Fictitious Name (Charter Number X00163788) created on August 22, 1985, and expired August 28, 2009, with Bayer holding the sole ownership interest.
3. In addition, Bayer does business under the name "James A. Bayer and Associates," with a last known business address of 4705 Oakridge Park Drive, St. Louis, Missouri 63129. A check of business registration records maintained by the Missouri Secretary of State indicates that no Missouri business is registered under the name of James A. Bayer and Associates.
4. The Missouri Commissioner of Securities issued Order No. CD-01-27 against Bayer on October 2, 2001, for violations of Missouri's securities laws. According to Order No. CD-01-27, Bayer unlawfully transacted business as an unlicensed agent and offered or sold unregistered securities to Missouri residents.

5. Bayer had known Missouri Resident 1 ("MR1") for approximately thirty-seven (37) years and had sold MR1 insurance products on numerous occasions.
6. Beginning sometime in 2005, Bayer offered and sold MR1 at least twenty-nine thousand dollars (\$29,000) in securities including, but not limited to:
 - a. a 2005 promissory note of at least nineteen thousand dollars (\$19,000). The funds received from MR1 were to be used for the purchase of an "Advisor's Excel program." According to the terms of the note, MR1 would receive ten percent interest annually;
 - b. a five thousand dollar (\$5,000) investment MR1 provided to Bayer by personal check written on September 5, 2007, to James A. Bayer & Associates. There was no investment contract or documentation provided to MR1; and
 - c. a five thousand dollar (\$5,000) investment MR1 provided to Bayer by personal check written on November 8, 2007, to Bayer. A receipt provided to MR1 indicated MR1 would receive ten percent (10%) interest semi-annually for a period of six months.
7. At all times relevant, records maintained by the Commissioner of Securities contained no registration, granted exemption or notice filing indicating status as a "federal covered security" for the investments offered and sold to MR1 by Bayer.
8. Prior to or at the time of the investments, Bayer did not disclose to MR1 material information relating to the investments, including, but not limited to:
 - a. that the securities were not registered;
 - b. how the proceeds of the investment would specifically be used;
 - c. the risks associated with the investment; and
 - d. Bayer's financial situation.
9. On January 7, 2010, after not receiving any of the promised payments on MR1's investments, MR1 delivered a handwritten letter to Bayer specifically demanding the return of MR1's November 8, 2007 investment.
10. In response to MR1's demand letter, MR1 received three (3) payments, between January and March 2010, totaling thirteen thousand one hundred thirty two dollars and ninety two cents (\$13,132.92) from Bayer.
11. As of December 2010, MR1 had not received any additional payments of interest or return of principal.
12. In May 2007, Bayer offered and sold a long-time acquaintance and insurance client, Missouri Resident 2 ("MR2") a promissory note. According to the terms of the note, Bayer would provide a return of ten percent (10%) interest on MR2's ten thousand dollar (\$10,000) investment.
13. At all times relevant, records maintained by the Commissioner of Securities contained

no registration, granted exemption or notice filing indicating status as a “federal covered security” for the investment offered and sold to MR2 by Bayer.

14. Bayer failed to provide MR2 with material information regarding the investment, including, but not limited to:
 - a. that the note was not registered;
 - b. how the proceeds of the investment would specifically be used;
 - c. the risks associated with the investment; and
 - d. Bayer’s financial situation.
15. Sometime in or around May 2008, Bayer repaid MR2 in full, principal and interest, in a one-time lump sum.
16. In 2008, Bayer began advising another long time acquaintance, Missouri Resident 3 (“MR3”), regarding MR3’s equity and annuity investments. At the time MR3 became Bayer’s client, MR3 had equity investments and annuities managed by Edward Jones.
17. On August 28, 2008, Bayer met with MR3 and persuaded MR3 to liquidate MR3’s investments, including securities that were held in a brokerage account, and purchase an annuity from Bayer. Bayer stated to MR3 that the brokerage investments were losing money and told MR3 that the money would be safe in an annuity.
18. After persuading MR3 to liquidate MR3’s securities holdings, Bayer contacted the brokerage firm and assisted MR3 in effecting the liquidation of the assets held in MR3’s brokerage account.
19. Bayer then sold MR3 an equity-indexed annuity with the proceeds from the liquidation, from which Bayer received a commission.
20. A review of the records maintained by the Commissioner of Securities confirms that in or around August 2008, Bayer was not registered to offer or sell securities in Missouri or to transact business as an investment adviser.

II. STATUTORY PROVISIONS

21. Section 409.6-601(a), RSMo. (Cum. Supp. 2009), provides that the Missouri Securities Act of 2003 “shall be administered by the commissioner of securities”
22. Section 409.1-102(15), RSMo. (Cum. Supp. 2009), defines “Investment Adviser” as “a person, that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issue or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation”
23. Section 409.1-102(26), RSMo. (Cum. Supp. 2009), defines “Sale” to include: “every

contract of sale, contract to sell, or disposition of, a security or interest in a security for value.” That same section defines “offer to sell” as “every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.”

24. Section 409.1-102(28), RSMo. (Cum. Supp. 2009), defines “Security” as “a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest of participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.”

25. Section 409.3-301, RSMo. (Cum. Supp. 2009), states:

It is unlawful for a person to offer or sell a security in this state unless:

- (1)The security is a federal covered security;
- (2)The security, transaction, or offer is exempted from registration under sections 409.2-201 to 409.2-203; or
- (3)The security is registered under this act.

26. Section 409.4-403(a), RSMo. (Cum. Supp. 2009), states:

It is unlawful for a person to transact business in the state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

27. Section 409.5-501, RSMo. (Cum. Supp. 2009), states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1)To employ a device, scheme, or artifice to defraud;
- (2)To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
- (3)To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

28. Section 409.6-604, RSMo. (Cum. Supp. 2009), states:

(a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing before the commissioner must be provided. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536, RSMo, and procedural rules promulgated by the commissioner. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may:

(1) Impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation;

(2) Order a person subject to the order to pay restitution for any loss, including the amount of any actual damages that may have been caused by the conduct and interest at the rate of eight percent per year from the date of the violation causing the loss or disgorge any profits arising from the violation;

(3) In addition to any civil penalty otherwise provided by law, impose an additional civil penalty not to exceed five thousand dollars for each such violation if the commissioner finds that a person subject to the order has violated any provision of this act and that such violation was committed against an elderly or disabled person.

For purposes of this section, the following terms mean:

(A) "Disabled person", a person with a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment, or being regarded as having such an impairment;

(B) "Elderly person", a person sixty years of age or older."

(e) In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

III. CONCLUSIONS OF LAW

Multiple Violations of Offering and Selling Unregistered, Non-Exempt Securities

29. Paragraphs 1 through 28 are incorporated by reference as though fully set forth herein.
30. Respondent Bayer offered and sold securities as those terms are defined in Sections 409.1-102(26) and (28), RSMo. (Cum. Supp. 2009).
31. At all times relevant, records maintained by the Commissioner of Securities contained no registration, granted exemption, or notice filing indicating status as a “federal covered security” for the investments offered and sold by Respondent Bayer.
32. Respondent Bayer violated Section 409.3-301, RSMo. (Cum. Supp. 2009), when he offered and sold securities in Missouri without these securities being (1) a federal covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-202, RSMo. (Cum. Supp. 2009), or (3) registered under the Missouri Securities Act of 2003.
33. Respondent Bayer’s actions in offering and selling securities that were not registered, exempt or a federal covered security constitute an illegal act, practice, or course of business and thus such actions are subject to the commissioner’s authority under Section 409.6-604, RSMo. (Cum. Supp. 2009).

Multiple Violations of Transacting Business as an Unregistered Investment Adviser

34. Paragraphs 1 through 28 are incorporated by reference as though fully set forth herein.
35. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration or granted exemption for Respondent Bayer to transact business as an investment adviser in the State of Missouri.
36. Respondent Bayer violated Section 409.4-403(a), RSMo. (Cum. Supp. 2009), when he transacted business as an investment adviser without being registered or exempt from registration as an investment adviser by, as an integral component of other financially related services, providing investment advice to a Missouri resident for compensation.
37. Respondent Bayer’s actions in transacting business as an unregistered investment adviser constitute an illegal act, practice, or course of business and thus such actions are subject to the commissioner’s authority under Section 409.6-604, RSMo. (Cum.

Supp. 2009).

Multiple Violations of Omitting to State Material Facts in Connection with the Offer or Sale of a Security

38. Paragraphs 1 through 28 are incorporated by reference as though fully set forth herein.
39. In connection with the offer, sale or purchase of a security, Respondent Bayer omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
 - a. that the securities offered or sold were not registered;
 - b. how the proceeds of the investment would specifically be used;
 - c. risks of the investments; or
 - d. Respondent's financial situation.
40. Respondent Bayer violated Section 409.5-501, (RSMo. Cum. Supp.), when, in connection with the offer, sale or purchase of a security, he omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.
41. Respondent Bayer's actions in omitting to state material facts constitute an illegal act, practice, or course of business and thus such actions are subject to the commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2009).
42. This order is in the public interest and is consistent with the purposes of the Missouri Securities Act of 2003. See Section 409.6-605(b), RSMo. (Cum. Supp. 2009).

IV. ORDER

NOW, THEREFORE, it is hereby ordered that Respondent Bayer, his agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order be prohibited from:

- A. violating or materially aiding in any violation of Section 409.3-301, RSMo. (Cum. Supp. 2009), by offering or selling any securities as defined by Section 409.1-102(28), RSMo. (Cum. Supp. 2009), in the State of Missouri unless those securities are registered in accordance with the provisions of Section 409.3-301;
- B. violating or materially aiding in any violation of Section 409.4-403(a), RSMo. (Cum. Supp. 2009), by transacting business as an unregistered investment adviser;
- C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2009), by, in connection with the offer or sale of securities, omitting to state a material fact necessary in order to make a statement made, in light of the circumstances under which it is made, not misleading.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Bayer for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Bayer requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Bayer for multiple violations of Section 409.4-403(a), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Bayer requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Bayer for multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Bayer requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an order of restitution, the Commissioner will determine whether to order Respondent Bayer to pay restitution for any loss, including the amount of any actual damages that may have been caused by the conduct of Respondent Bayer, and interest at the rate of eight percent per year from the date of the violation causing the loss, or disgorge any profits arising from violations of Sections 409.3-301 and 409.5-501, RSMo. (Cum. Supp. 2009), after review of evidence submitted by the Enforcement Section, in a final order, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2009), unless Respondent Bayer requests a hearing and shows cause why this restitution or disgorgement should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an award for the costs of the investigation against the Respondent Bayer in this proceeding, the Commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2009), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondent Bayer requests a hearing and shows cause why such award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 31ST DAY OF JANUARY, 2011.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES



State of Missouri
Office of Secretary of State

Case No. AP-11-16

IN THE MATTER OF:

JAMES A. BAYER, CRD #1011184;

Respondent.

Serve at: James A. Bayer
5089 Lampglow Court
St. Louis, Missouri 63129

NOTICE

TO: Respondents and any unnamed representatives aggrieved by this Order

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to Section 409.6-604(b), RSMo. (Cum. Supp. 2009), and 15 CSR 30-55.020.

Within fifteen (15) days after receipt of a request in a record from a person or persons subject to this order, the Commissioner will schedule this matter for a hearing.

A request for a hearing must be mailed or delivered, in writing, to:

Matthew D. Kitzi, Commissioner of Securities
Office of the Secretary of State, Missouri
600 West Main Street, Room 229
Jefferson City, Missouri, 65102.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2011, a copy of the foregoing Order to Cease and Desist in the above styled case was **mailed by Certified U.S. mail to:**

James A. Bayer
5089 Lampglow Court
St. Louis, Missouri 63129

And by hand-delivery to:

Nathan Soendker
Chief Enforcement Counsel
Missouri Securities Division

John Hale, Specialist